



## Lawyers' Committee for Civil Rights Under Law

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April 20, 2004

### VIA FACSIMILE ONLY

Docket No. 04-05  
Communications Division  
Public Information Room,  
Mailstop 1-5  
Office of the Comptroller of the  
Currency  
250 E St. SW  
Washington 20219  
**FAX (202) 874-4448**

Robert E. Feldman  
Executive Secretary  
Attention: Comments  
Federal Deposit Insurance  
Corporation  
550 17th St NW  
Washington DC 20429  
FAX (202) 898-3838

Docket No. R-1180  
Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal  
Reserve System  
20th Street and Constitution  
Avenue, NW  
Washington DC 20551  
**FAX (202) 452-3810**

Regulation Comments, Attention:  
**Docket No. 2003-67**  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street NW  
Washington DC 20552  
**FAX (202) 906-6518**

Dear **Officials of Federal Bank** and Thrift Agencies:

The Lawyers' Committee for Civil Rights Under Law ("the Lawyers' Committee") is a nonpartisan, nonprofit organization, **formed in 1963** at the request of President John F. Kennedy to involve **the private bar** in providing legal services to address **racial** discrimination. The Lawyers' Committee is committed to improving lending opportunities for minorities **and** holding lending institutions accountable **for** discriminatory practices. **As** such, the Lawyers' Committee **is** very concerned about discriminatory lending practices, which disproportionately **harm** minority **and** low-income communities depriving them of **equal** credit opportunities **and** stripping **them** of wealth.

The Lawyers' Committee **is** sending this comment **in** response to the Notice of Regulatory Review as required by the Economic Growth and Regulatory Paperwork Reduction Act ("EGRPA") of 1996. In response to the second series, "Consumer Protection; Lending - Related Rules," **we** respectfully request that **the** federal **banking** agencies retain their regulations concerning the Fair Housing Act ("FHA"), the Equal Credit Opportunity Act ("ECOA"), Home Mortgage Disclosure Act ("HMDA"), the Truth in Lending Act ("TILA"), **and** unfair or deceptive **acts and** practices.

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These acts all have established a clear Congressional intent and purpose to eliminate abusive and discriminatory lending. The Lawyers' Committee believes that expanding data reporting requirements will assist in achieving the goals of these fair lending statutes and substantially benefit consumers with little or no regulatory burden. Under **EGRPA**, federal agencies must identify "outdated" regulations. Currently, the incomplete data collection under **ECOA** and **HMDA** is outdated and frustrates the purposes of these acts in preventing discrimination. Of course, in addition to increasing data reporting requirements, the agencies must not limit the other consumer protections currently available under the regulations.

By contrast, changes which reduce data reporting requirements under the regulations related to these acts would interfere with the agencies' ability to fulfill their statutory obligations. Particularly in light of the recent decision by the Office of the Comptroller of the Currency to preempt all state anti-predatory lending legislation, these protections have become even more important to consumers. The Lawyers' Committee does not believe these statutes provide enough protection; therefore, any regulatory streamlining would further put consumers at risk.

These statutes – **FHA**, **ECOA**, **HMDA**, **TILA** – have been instrumental in protecting consumers, increasing access to homeownership, boosting economic development, and expanding small businesses in the nation's minority, immigrant, and low- and moderate-income communities. A reduction in consumer protections through a process of streamlining, contrary to the statute, will undermine the progress made in community development and expanding homeownership. Indeed, such a reduction would reduce the ability of the public to hold financial institutions accountable for compliance with consumer protection laws. By contrast, we advise that affirmative actions must be taken to ensure that more complete data disclosure becomes part of the overall effort to make equality in lending a reality.

### **Home Mortgage Disclosure Act**

Enacted by Congress in 1975, **HMDA** requires banks, savings and loans associations, credit unions, and other financial institutions to publicly report detailed data on their home lending activity. In **HMDA**, 12 U.S.C. § 2801, Congress found that financial institutions contributed to the decline of certain geographical areas by their failure to provide adequate home financing on reasonable terms and conditions. Accordingly, a major purpose of **HMDA** was to provide citizens and public officials with sufficient information to determine whether institutions are fulfilling their obligations to serve the housing needs of communities and neighborhoods in which they are located. Banker suggestions to exempt more institutions from data reporting will thwart **HMDA**'s purpose of determining if institutions are serving credit needs.

In **HMDA**, Congress expressed its will that institutions must provide loans on

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reasonable terms. **As** a step towards this Congressional objective, regulators need to update **HMDA** to include pricing information on all loans, critical **loan** terms (existence of prepayment penalties, for example), and key underwriting variables **such** as loan-to-value ratios and debt-to-income ratios. **HMDA** is becoming increasingly "outdated" **as** the industry adopts automated underwriting and risk-based pricing. **At the same time**, **HMDA** lacks key variables that enables the general public to assess if lenders **are** applying their sophisticated technology to provide credit that is priced fairly and has reasonable terms.

The regulators should also end the exemptions of certain lenders **from** **HMDA** and improve the existing data. Currently, small lenders (with **assets** under \$33 million) and lenders with **offices** in non-metropolitan areas are exempt **from** **HMDA** data reporting requirements. Data for rural **areas** is also incomplete, particularly information on the census tract location of **loans**. If **banks** and thrifts have assets under \$250 million dollars (or are pan of holding companies **under** \$1 billion **dollars**), they **do not have to report the census tract** location for loans in metropolitan areas in which they do not have **any** branch offices nor do they have to report the census tract location for loans rural, non-metropolitan areas. In addition, demographic information on the race, income level, and gender of borrowers is missing from loans that lenders purchase.

Technology **has** improved to such **an** extent that even **small** lenders would be confronted with minimal burden in collecting **HMDA** data. Also, all lenders would be able to readily collect additional data items. Overall, the **benefits** of expanded **HMDA** data requirements would greatly outweigh the burdens **and** would be **true** to **HMDA's** statutory purpose of assessing the extent to which credit needs are met.

### **Equal Credit Opportunity Act**

**ECOA** **and** the Federal Reserve's Regulation **B** prohibit discrimination against an applicant because of the applicant's race, color, sex, religion, national origin, marital status, age or receipt of public **assistance**. Currently, Regulation **B** prohibits lenders from collecting demographic data including race **and** gender of business owners seeking small business loans, except for limited self-assessment purposes. The Federal Reserve has asserted that their regulation guarantees that the loan process remains colorblind for all applicants. In reality, however, this regulation has become a shield behind which some banks hide their lack of serving women and minority-owned businesses. The publicly available data provided by **HMDA** has been instrumental in increasing access to home loans for formerly neglected **borrowers**. Likewise, the federal agencies would achieve **ECOA's** statutory purpose of combating discrimination if they allowed banks to voluntarily collect and report information on the demographics of their small business borrowers.

**The** total number of small business loans increased 24 percent from 2001 to 2002. However, despite the overall **increase**, the number of small business loans made to businesses **with revenue** under \$1 million continues to plummet. Lenders issued about **31 percent of**

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their loans to businesses with revenues under \$1 million in 2002. This is a **substantial** decrease ~~from~~**40** percent in 2001 and 60 percent in 1999. Similarly, lending to businesses in low- and moderate- income census tracts remains stagnant **as the percent of loans** made to businesses in these communities either decreased or remained the same over the last few years. The Lawyers' Committee believes that **just** like improvements to **HMDA**, enhancements to ECOA that allows lenders to collect demographic data will expand lending to traditionally underserved (and disproportionately minority) communities and **borrowers**.

**Truth in Lending Act**

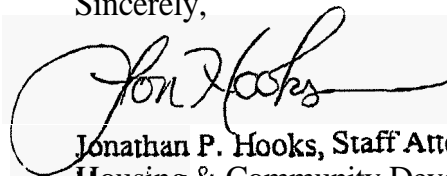
Finally, in 2001, ~~the~~ Federal Reserve Board ~~made~~ valuable improvements to their regulation implementing the Home Ownership and Equity Protection Act ("HOEPA"), which amended **TILA**. Among other benefits, the changes applied HOEPA's protections to more subprime loans, including **most** loans with single premium credit insurance. Since abusive lending continues to increase, the federal agencies **must** preserve ~~the~~ changes to **HOEPA**. ~~The~~ regulatory agencies must also preserve the critical right of rescission under **TILA**. This right empowers borrowers at the closing table, enabling them **to** bargain with lenders and eliminate onerous terms and conditions in their loans. The **right** of rescission provides **vital** protection in the event ~~that~~ a borrower desires to cancel an abusive loan up to three days **after** closing.

**In Conclusion**

To reiterate, the agencies **must** not weaken protections embodied in the regulations implementing **HMDA**, ECOA, TILA, FHA and other statutes addressing unfair and deceptive practices. Rather, data disclosure requirements under these **laws** must become more comprehensive in order to identify and uproot discrimination. **Both** of these goals can be reached **while** meeting the requirements of the EGRPA.

Thank you for **your** attention to this critical matter. If you have questions regarding our comments, please do not hesitate to contact me directly at (202) 662-8326.

Sincerely,



Jonathan P. Hooks, Staff Attorney  
Housing & Community Development Project

cc: National Community Reinvestment Coalition